

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 13, 2013**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2012AP1930-CR**

**Cir. Ct. No. 2010CT965**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**TODD A. LAWS,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Walworth County:  
ROBERT J. KENNEDY, Judge. *Affirmed.*

¶1 GUNDRUM, J.<sup>1</sup> Todd A. Laws appeals from his conviction for operating a motor vehicle while under the influence of an intoxicant following the

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

circuit court's denial of his motion to suppress.<sup>2</sup> Laws contends the police officer who performed the traffic stop leading to his arrest and conviction violated his constitutional right to be free from unreasonable searches and seizures. Specifically, he argues that the officer lacked the reasonable suspicion necessary to lawfully stop him because the only questionable activity the officer observed was Laws weaving within his own lane. We disagree—the officer did not simply see Laws weaving in his lane; he observed Laws “constant[ly] swerving” for one-half to one mile, before and after stopping at a stop sign, at 2:45 a.m. on a Sunday. We affirm.

### **BACKGROUND**

¶2 The arresting officer was the only witness to testify at the suppression hearing on Laws' motion. The facts relevant to this appeal are undisputed and derived from the officer's testimony at the hearing.

¶3 The officer was on duty around 2:45 a.m. on a Sunday when he observed Laws' vehicle in front of him “constant[ly] swerving ... back and forth from ... the center of the road, over towards the shoulder ... in a jerky manner.” He estimated that the traffic lane was six- to eight-feet wide and Laws' vehicle four- to six-feet wide. He observed Laws properly stop at a stop sign, cross over an intersection, and continue swerving on a wider stretch of road on the other side of the intersection. The officer followed Laws for a total distance of one-half to one mile. During that time, he observed Laws swerve “continuous[ly],” more than four times, but always within his lane.

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<sup>2</sup> The Honorable Robert J. Kennedy presided over the plea and sentencing hearing and signed the judgment of conviction. The Honorable David M. Reddy presided over the suppression hearing and decided the motion to suppress.

¶4 The officer performed a traffic stop on Laws and ultimately arrested him. Laws was charged with OWI and subsequently filed a motion to suppress, contending the officer lacked reasonable suspicion to lawfully stop him. The circuit court found the officer's testimony from the suppression hearing credible and concluded the officer had reasonable suspicion to stop Laws. The court denied the motion and Laws appeals.

### **DISCUSSION**

¶5 Whether a traffic stop is reasonable is a question of constitutional fact. *State v. Post*, 2007 WI 60, ¶8, 301 Wis. 2d 1, 733 N.W.2d 634. Where, as here, the historical facts are undisputed, we review independently the application of those facts to constitutional principles. *State v. Olson*, 2001 WI App 284, ¶6, 249 Wis. 2d 391, 639 N.W.2d 207. The determination of reasonableness is a commonsense test that requires us to decide “whether the facts of the case would warrant a reasonable police officer, in light of his or her training and experience, to suspect that the individual has committed, was committing, or is about to commit a crime.” *Post*, 301 Wis. 2d 1, ¶13.

¶6 The reasonableness of a stop is determined based on the totality of the circumstances. *Id.* In order for an investigatory stop to be justified by reasonable suspicion, an officer must possess specific and articulable facts that warrant a reasonable belief that criminal activity is afoot. *State v. Young*, 2006 WI 98, ¶21, 294 Wis. 2d 1, 717 N.W.2d 729. A mere hunch is insufficient, but “police officers are not required to rule out the possibility of innocent behavior before initiating a brief stop.” *Id.* (citation omitted). “[I]t may be ‘the essence of good police work’ to briefly stop a suspicious individual ... to ‘maintain the status

quo momentarily while obtaining more information.” *State v. Chambers*, 55 Wis. 2d 289, 294, 198 N.W.2d 377 (1972) (citation omitted).

¶7 Relying on *Post*, Laws contends the traffic stop was unlawful because the only questionable driving the arresting officer observed was Laws’ weaving within his own traffic lane. In *Post*, our supreme court addressed whether weaving within one’s lane, without more, would constitute reasonable suspicion for a stop. *See Post*, 301 Wis. 2d 1, ¶9. It declined to adopt a bright-line rule one way or the other and instead emphasized that the determination must be made on a case-by-case basis. *Id.*, ¶26. It then concluded that the facts before it amounted to reasonable suspicion. *Id.*, ¶27. Those facts were that the arresting officer observed Post drive “at least partially in the unmarked parking lane,” and, after turning around and catching up to Post, observed Post “smooth[ly]” weave “approximately ten feet from right to left” in an “‘S-type’ pattern” across the travel and parking lanes. *Id.*, ¶¶4-5. Post repeated the S-pattern several times over two blocks, and the incident occurred at 9:30 at night. *Id.*

¶8 Laws contends his driving provided less reason for suspicion than Post’s. We disagree. Laws emphasizes that his swerving within the narrow lane in which he was operating was less pronounced than Post’s and was not in a smooth, S-shaped pattern like Post’s weaving. While Laws concedes “the time of night [in this case] adds some suspicion,” he also asserts that because the officer observed no other law violations over the one-half to one mile distance he followed Laws, which we note is longer than the two blocks the officer in *Post* followed Post, there was less reason to suspect Laws was impaired.

¶9 Each case stands on its own unique facts; however, the conduct in this case arguably provided more reason for suspicion than that in *Post*. First,

Laws' swerving was observed around bar time, at 2:45 a.m. See WIS. STAT. § 125.32(3).<sup>3</sup> In *Post*, the supreme court noted that the 9:30 p.m. timing of Post's weaving was significant, although "not as significant as when poor driving takes place at or around 'bar time.'" *Post*, 301 Wis. 2d 1, ¶36. So the timing here was suspicious, particularly since the driving took place on a Saturday night/Sunday morning, as opposed to during the normal workweek.<sup>4</sup> In addition, the officer in *Post* had followed Post and observed his weaving for about two blocks. *Id.* Here, the officer followed Laws for much longer—one-half to one mile—and noted continuous weaving the entire time. Although Laws argues the significance of the officer observing no other law violations by him during that time, we think it more significant that the swerving continued throughout all of this lengthier observation period. Finally, we note that in this case the officer observed Laws swerving both before and after he stopped at a stop sign. This is of import because pausing at the stop sign would have afforded Laws an opportunity to reconstitute himself and proceed thereafter with normal driving. His failure to do so, combined with the distance over which he continually swerved, adds to the likelihood that the swerving was not due to a momentary distraction such as changing the radio station, reaching for food, or perhaps sneezing, but was more likely due to a sustained, impaired physical condition such as excessive drug or alcohol use or lack of sleep.

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<sup>3</sup> According to WIS. STAT. § 125.32(3), "[n]o premises for which a Class 'B' license or permit is issued may remain open between the hours of 2 a.m. and 6 a.m., except as provided in this paragraph and par. (c). On Saturday and Sunday, the closing hours shall be between 2:30 a.m. and 6 a.m."

<sup>4</sup> The court in *State v. Post*, 2007 WI 60, 301 Wis. 2d 1, 733 N.W.2d 634, makes no note of the day of the week when Post was arrested, so we do not mean to distinguish from *Post* on that basis. The day of the week is merely one of many factors leading us to the conclusion that the officer's suspicion of impaired driving in this case was reasonable.

¶10 The totality of the circumstances here would have warranted a reasonable police officer to suspect Laws was operating while under the influence. Therefore, the stop was lawful.

*By the Court.*—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

